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September 9, 2008

BY FACSIMILE & FEDEX

Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: **MUR 6053**

Dear General Counsel:

As indicated on the enclosed Statement of Designation of Counsel, this firm represents the Huffington Post. We write in response to the Commission's letter dated August 25, 2008 concerning the above-referenced Matter Under Review.

The Matter Under Review arises out of a letter to the Commission from Victoria Coryelle dated August 5, 2008, which alleges that the "Fundrace2008" page of the Huffington Post website violates 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, because it uses public information obtained from the Commission "in a commercial manner." To the contrary, the Huffington Post maintains and at all times has maintained Fundrace2008 in full compliance with the applicable law.

The Huffington Post is a news and opinion website, which in three years has become "The Internet Newspaper." The site offers coverage of politics, media, business, entertainment, living and style, and is a top destination for news, blogs and original content. The Huffington Post has eleven million unique users each month and is the most-linked-to blog on the Internet, according to Technorati. The Huffington Post has over 1,800 influential bloggers – from celebrities and politicians to academics and

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policy experts – who contribute in real-time on a wide range of topics making news today.

Fundrace2008 is located at fundrace.huffingtonpost.com. It provides public information on campaign finance, a topic that is both newsworthy and of interest to the site's readers. The information on the site has been obtained from the Commission's fip website and comprises the information submitted by donors when they make campaign contributions of \$200 or more in a calendar year, namely, each donor's name, address, city, state, zip code, occupation and employer. Fundrace2008 permits the public to search the data by any of those fields. (A screenshot of the current Fundrace2008 page is enclosed as Exhibit 1.)

The Huffington Post is only one of a number of news organizations that publish FEC data in this manner:

- The New York Times website has a page that permits the public to search the Commission's data by name or zip code: <http://elections.nytimes.com/2008/president/campaign-finance/search-contributions.html>
- The Washington Post website has a page that permits the public to search the Commission's data by last name, zip code, recipient or amount: <http://elections.nytimes.com/2008/president/campaign-finance/search-contributions.html>
- Congressional Quarterly has a website that permits subscribers to search by name, zip code, state, city, employer or occupation and view individual contributor filings: <http://corporate.cq.com/wmspage.cfm?perm1=102>

Section 438(a)(4) states that "information copied from [FEC] reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." The regulations promulgated under that section state that:

The use of information, which is copied or otherwise obtained from reports filed under 11 CFR part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

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11 C.F.R. § 104.15(c). This regulation reflects, among other things, the legislative history of Section 438(a)(4), which indicates that Congress explicitly contemplated that "newspapers may, if they wish, run lists of contributors and amounts" that are obtained from the Commission's data. See *FEC v. Political Contributions Data*, 943 F.2d 190, 192 (2d Cir. 1991) (discussing legislative history).

Ms. Coryelle's letter alleges that the Huffington Post cannot use the Commission's data and the Fundrace2008 page should be disabled, because the Huffington Post is a for-profit enterprise which makes money through advertisements, rendering its publication of FEC data for "commercial purposes." Yet virtually every news organization stands in the same position, and the Commission nevertheless has determined that news organizations may publish its data. Thus, the for-profit status of a news organization alone does not mean that its use of the Commission's data is for "commercial purposes." Consistent with this, courts have repeatedly ruled that the for-profit status of a news organization does not render its activities *per se* "commercial." See, e.g., *Leidholdt v. L.F.P. Inc.*, 860 F.2d 890, 895 (9th Cir. 1988) (fact that magazine "is operated for profit does not extend a commercial purpose to every article within it"); *Myskina v. Conde Nast Publications, Inc.*, 386 F. Supp. 2d 409, 418 (S.D.N.Y. 2005) ("[t]hat a publication is produced for profit or even that 'a publication may have used a person's name or likeness 'solely or primarily to increase the circulation' of a newsworthy article - and thus increase profits - does not mean that the name or likeness has been used for trade purposes"); *Davis v. High Society Magazine, Inc.*, 90 A.D.2d 374, 379, 457 N.Y.S.2d 308, 313 (2d Dep't 1982) (media's use of name or picture not considered use for purposes of trade "irrespective of the fact that such publications are carried on largely, even primarily, to make a profit"). The "principal purpose" of the Huffington Post is to publish news and opinion, and its publication of FEC data therefore does not violate Section 438(a)(4) or 11 C.F.R. § 104.15(c).

Ms. Coryelle's letter also alleges that the mapping feature of Fundrace2008, which coordinates publicly available Internet mapping functionality with the Commission's publicly available data, "violates basic privacy." As a practical matter, this aspect of Ms. Coryelle's letter is a critique of any of the mapping services that are available on the Internet, which permit the public to view street maps and, in some cases, aerial and street-level photographs, of virtually any address in the United States. It is not properly addressed to the Commission, which has no jurisdiction to regulate such mapping services.

Respectfully submitted,



Anne E. Beaumont

Enclosures

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STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Client.
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MUR # 6053

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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

9/8/08
Date

[Signature]
Respondent/Client Signature

VP, Finance & Operations
Title

RESPONDENT/CLIENT: BuffingtonPost.com
(Please Print)

MAILING ADDRESS: 560 Broadway, Suite 308

New York, NY 10012

TELEPHONE-HOME ()

BUSINESS (212) 245-7844

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437(g)(1)(B) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

Rev. 2006

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Exhibit 1

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Do Not Sell My Personal Info

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Address

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Map

Street View

Layers

Full Screen

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As featured in the Google Maps Election Gallery

Funds Raised	\$44,141,100
Search Change	100%
Money Change	100%
State Ranking	100%

2013 Political Campaigns Map | Election Results | 2012
Source: FEC, September 8, 2012

